

By: Smith of Harris

H.B. No. 2694

A BILL TO BE ENTITLED

1 AN ACT

2 relating to the continuation and functions of the Texas Commission
3 on Environmental Quality and abolishing the On-site Wastewater
4 Treatment Research Council.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 ARTICLE 1. GENERAL PROVISIONS

7 SECTION 1.01. The heading to Chapter 5, Water Code, is
8 amended to read as follows:

9 CHAPTER 5. TEXAS [~~NATURAL RESOURCE CONSERVATION~~] COMMISSION ON
10 ENVIRONMENTAL QUALITY

11 SECTION 1.02. Section 5.014, Water Code, is amended to read
12 as follows:

13 Sec. 5.014. SUNSET PROVISION. The Texas [~~Natural Resource~~
14 ~~Conservation~~] Commission on Environmental Quality is subject to
15 Chapter 325, Government Code (Texas Sunset Act). Unless continued
16 in existence as provided by that chapter, the commission is
17 abolished and this chapter expires September 1, 2023 [~~2011~~].

18 SECTION 1.03. Subchapter C, Chapter 5, Water Code, is
19 amended by adding Section 5.061 to read as follows:

20 Sec. 5.061. PROHIBITION ON ACCEPTING CAMPAIGN
21 CONTRIBUTIONS. A member of the commission may not accept a
22 contribution to a campaign for election to an elected office. If a
23 member of the commission accepts a campaign contribution, the
24 person is considered to have resigned from the office and the office

1 immediately becomes vacant. The vacancy shall be filled in the
2 manner provided by law.

3 SECTION 1.04. Subchapter D, Chapter 5, Water Code, is
4 amended by adding Section 5.1031 to read as follows:

5 Sec. 5.1031. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE
6 RESOLUTION. (a) The commission shall develop and implement a
7 policy to encourage the use of:

8 (1) negotiated rulemaking procedures under Chapter
9 2008, Government Code, for the adoption of commission rules; and

10 (2) appropriate alternative dispute resolution
11 procedures under Chapter 2009, Government Code, to assist in the
12 resolution of internal and external disputes under the commission's
13 jurisdiction.

14 (b) The commission's procedures relating to alternative
15 dispute resolution must conform, to the extent possible, to any
16 model guidelines issued by the State Office of Administrative
17 Hearings for the use of alternative dispute resolution by state
18 agencies.

19 (c) The commission shall:

20 (1) coordinate the implementation of the policy
21 adopted under Subsection (a);

22 (2) provide training as needed to implement the
23 procedures for negotiated rulemaking or alternative dispute
24 resolution; and

25 (3) collect data concerning the effectiveness of those
26 procedures.

27 SECTION 1.05. Section 12.052(a), Water Code, is amended to

1 read as follows:

2 (a) The commission shall make and enforce rules and orders
3 and shall perform all other acts necessary to provide for the safe
4 construction, maintenance, repair, and removal of dams located in
5 this state. In performing the commission's duties under this
6 subsection, the commission shall identify and focus on the most
7 hazardous dams in the state.

8 ARTICLE 2. TRANSFER OF CERTAIN DUTIES TO THE RAILROAD COMMISSION

9 SECTION 2.01. Section 91.011, Natural Resources Code, is
10 amended to read as follows:

11 Sec. 91.011. CASING. (a) Before drilling into the oil or
12 gas bearing rock, the owner or operator of a well being drilled for
13 oil or gas shall encase the well with good and sufficient wrought
14 iron or steel casing or with any other material that meets standards
15 adopted by the commission, particularly where wells could be
16 subjected to corrosive elements or high pressures and temperatures,
17 in a manner and to a depth that will exclude surface or fresh water
18 from the lower part of the well from penetrating the oil or gas
19 bearing rock, and if the well is drilled through the first into the
20 lower oil or gas bearing rock, the well shall be cased in a manner
21 and to a depth that will exclude fresh water above the last oil or
22 gas bearing rock penetrated.

23 (b) The commission shall adopt rules regarding the depth of
24 well casings necessary to meet the requirements of this section.

25 SECTION 2.02. Subchapter B, Chapter 91, Natural Resources
26 Code, is amended by adding Section 91.0115 to read as follows:

27 Sec. 91.0115. CASING; LETTER OF DETERMINATION. (a) The

1 commission shall issue, on request from an applicant for a permit
2 for a well to be drilled into oil or gas bearing rock, a letter of
3 determination stating the total depth of surface casing required
4 for the well by Section 91.011.

5 (b) The commission may charge a fee in an amount to be
6 determined by the commission for a letter of determination.

7 (c) The commission shall charge a fee not to exceed \$75, in
8 addition to the fee required by Subsection (b), for processing a
9 request to expedite a letter of determination. Money collected
10 under this subsection may be used only to study and evaluate
11 electronic access to geologic data and surface casing depths under
12 Section 91.020.

13 SECTION 2.03. Subchapter B, Chapter 91, Natural Resources
14 Code, is amended by adding Section 91.020 to read as follows:

15 Sec. 91.020. ELECTRONIC GEOLOGIC DATA. The commission
16 shall work cooperatively with other appropriate state agencies to
17 study and evaluate electronic access to geologic data and surface
18 casing depths necessary to protect usable groundwater in this
19 state.

20 SECTION 2.04. Section 27.033, Water Code, is amended to
21 read as follows:

22 Sec. 27.033. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
23 ~~DIRECTOR~~]. A person making application to the railroad commission
24 for a permit under this chapter shall submit with the application a
25 letter of determination from the railroad commission [~~from the~~
26 ~~executive director~~] stating that drilling and using the disposal
27 well and injecting oil and gas waste into the subsurface stratum

1 will not endanger the freshwater strata in that area and that the
2 formation or stratum to be used for the disposal is not freshwater
3 sand.

4 SECTION 2.05. Section 27.046, Water Code, is amended to
5 read as follows:

6 Sec. 27.046. LETTER OF DETERMINATION [~~FROM EXECUTIVE~~
7 ~~DIRECTOR~~]. (a) The railroad commission may not issue a permit
8 under rules adopted under this subchapter until the commission
9 issues to the applicant for the permit [~~provides to the railroad~~
10 ~~commission~~] a letter of determination [~~from the executive director~~]
11 stating that drilling and operating the anthropogenic carbon
12 dioxide injection well for geologic storage or operating the
13 geologic storage facility will not injure any freshwater strata in
14 that area and that the formation or stratum to be used for the
15 geologic storage facility is not freshwater sand.

16 (b) To make the determination required by Subsection (a),
17 the railroad commission [~~executive director~~] shall review:

- 18 (1) the area of review and corrective action plans;
19 (2) any subsurface monitoring plans required during
20 injection or post injection;
21 (3) any postinjection site care plans; and
22 (4) any other elements of the application reasonably
23 required in order for the railroad commission [~~executive director~~]
24 to make the determination required by Subsection (a).

25 (c) The railroad commission shall adopt rules to implement
26 and administer this section.

27 SECTION 2.06. Section 5.701(r), Water Code, is repealed.

1 SECTION 2.07. (a) The Railroad Commission of Texas shall
2 adopt rules to implement the changes in law made by this article not
3 later than March 1, 2012.

4 (b) A rule, form, policy, or procedure of the Texas
5 Commission on Environmental Quality related to the changes in law
6 made by this article continues in effect as a rule, form, policy, or
7 procedure of the Railroad Commission of Texas and remains in effect
8 until amended or replaced by that agency.

9 ARTICLE 3. PUBLIC INTEREST

10 SECTION 3.01. Subchapter F, Chapter 5, Water Code, is
11 amended by adding Section 5.239 to read as follows:

12 Sec. 5.239. PUBLIC EDUCATION AND ASSISTANCE. (a) The
13 executive director shall ensure that the agency is responsive to
14 environmental and citizens' concerns, including environmental
15 quality and consumer protection.

16 (b) The executive director shall develop and implement a
17 program to:

18 (1) provide a centralized point for the public to
19 access information about the commission and to learn about matters
20 regulated by the commission;

21 (2) identify and assess the concerns of the public in
22 regard to matters regulated by the commission; and

23 (3) respond to the concerns identified by the program.

24 SECTION 3.02. Section 5.271, Water Code, is amended to read
25 as follows:

26 Sec. 5.271. CREATION AND GENERAL RESPONSIBILITY OF THE
27 OFFICE OF PUBLIC INTEREST COUNSEL. The office of public interest

1 counsel is created to ensure that the commission promotes the
2 public's interest [~~and is responsive to environmental and citizens'~~
3 ~~concerns including environmental quality and consumer protection~~].
4 The primary duty of the office is to represent the public interest
5 as a party to matters before the commission.

6 SECTION 3.03. Subchapter G, Chapter 5, Water Code, is
7 amended by adding Section 5.2725 to read as follows:

8 Sec. 5.2725. ANNUAL REPORT; PERFORMANCE MEASURES. (a) The
9 office of public interest counsel shall report to the commission
10 each year in a public meeting held on a date determined by the
11 commission to be timely for the commission to include the reported
12 information in the commission's reports under Sections 5.178(a) and
13 (b) and in the commission's biennial legislative appropriations
14 requests as appropriate:

15 (1) an evaluation of the office's performance in
16 representing the public interest in the preceding year;

17 (2) an assessment of the budget needs of the office,
18 including the need to contract for outside expertise; and

19 (3) any legislative or regulatory changes recommended
20 under Section 5.273.

21 (b) The commission and the office of public interest counsel
22 shall work cooperatively to identify performance measures for the
23 office.

24 SECTION 3.04. Subchapter G, Chapter 5, Water Code, is
25 amended by adding Section 5.276 to read as follows:

26 Sec. 5.276. FACTORS FOR PUBLIC INTEREST REPRESENTATION.

27 (a) The commission by rule, after consideration of recommendations

1 from the office of public interest counsel, shall establish factors
2 the public interest counsel must consider before the public
3 interest counsel decides to represent the public interest as a
4 party to a commission proceeding.

5 (b) Rules adopted under this section must include:

6 (1) factors to determine the nature and extent of the
7 public interest; and

8 (2) factors to consider in prioritizing the workload
9 of the office of public interest counsel.

10 ARTICLE 4. COMPLIANCE AND ENFORCEMENT

11 SECTION 4.01. Section 5.753, Water Code, is amended by
12 amending Subsections (a) and (b) and adding Subsection (d-1) to
13 read as follows:

14 (a) Consistent with other law and the requirements
15 necessary to maintain federal program authorization, the
16 commission by rule shall develop a method [~~uniform standard~~] for
17 evaluating compliance history that ensures consistency in the
18 evaluation. In developing the method, the commission may account
19 for differences among regulated entities.

20 (b) The components of compliance history must include:

21 (1) except for orders described by Subsection
22 (d-1)(2), enforcement orders, court judgments, consent decrees,
23 and criminal convictions of this state and the federal government
24 relating to compliance with applicable legal requirements under the
25 jurisdiction of the commission or the United States Environmental
26 Protection Agency;

27 (2) notwithstanding any other provision of this code,

1 orders issued under Section 7.070;

2 (3) to the extent readily available to the commission,
3 enforcement orders, court judgments, and criminal convictions
4 relating to violations of environmental laws of other states; and

5 (4) changes in ownership.

6 (d-1) The components of compliance history may include:

7 (1) information related to the complexity of the
8 regulated entity, including:

9 (A) the complexity of the regulatory
10 requirements applicable to the entity; and

11 (B) the severity of the consequences of
12 noncompliance by the entity;

13 (2) enforcement orders issued without penalties,
14 shutdown orders, or other punitive sanctions; and

15 (3) any other positive compliance factors related to
16 the regulated entity.

17 SECTION 4.02. Section 5.754(d), Water Code, is amended to
18 read as follows:

19 (d) The commission by rule may require [~~shall establish~~
20 ~~methods of assessing the compliance history of regulated entities~~
21 ~~for which it does not have adequate compliance information. The~~
22 ~~methods may include requiring~~] a compliance inspection to determine
23 an entity's eligibility for participation in a program that
24 requires a high level of compliance.

25 SECTION 4.03. Subchapter A, Chapter 7, Water Code, is
26 amended by adding Section 7.006 to read as follows:

27 Sec. 7.006. ENFORCEMENT POLICIES. (a) The commission by

1 rule shall adopt a general enforcement policy that describes the
2 commission's approach to enforcement.

3 (b) The commission shall assess, update, and publicly adopt
4 specific enforcement policies regularly, including policies
5 regarding the calculation of penalties.

6 (c) The commission shall make the policies available to the
7 public, including by posting the policies on the commission's
8 Internet website.

9 SECTION 4.04. Sections 7.052(a) and (c), Water Code, are
10 amended to read as follows:

11 (a) The amount of the penalty for a violation of Chapter 37
12 of this code, Chapter 366, 371, or 372, Health and Safety Code, or
13 Chapter 1903, Occupations Code, may not be less than \$50 or greater
14 than \$5,000 [~~exceed \$2,500~~] a day for each violation.

15 (c) The amount of the penalty for all other violations
16 within the jurisdiction of the commission to enforce may not be less
17 than \$50 or greater than \$25,000 [~~exceed \$10,000~~] a day for each
18 violation.

19 SECTION 4.05. Section 7.067, Water Code, is amended to read
20 as follows:

21 Sec. 7.067. SUPPLEMENTAL ENVIRONMENTAL PROJECTS. (a) The
22 commission may compromise, modify, or remit, with or without
23 conditions, an administrative penalty imposed under this
24 subchapter. In determining the appropriate amount of a penalty for
25 settlement of an administrative enforcement matter, the commission
26 may consider a respondent's willingness to contribute to
27 supplemental environmental projects that are approved by the

1 commission, giving preference to projects that benefit the
2 community in which the alleged violation occurred. The commission
3 may encourage the cleanup of contaminated property through the use
4 of supplemental environmental projects. The commission may approve
5 a supplemental environmental project with activities in territory
6 of the United Mexican States if the project substantially benefits
7 territory in this state in a manner described by Subsection (b).
8 Except as provided by Subsection (a-1), the [The] commission may
9 not approve a project that is necessary to bring a respondent into
10 compliance with environmental laws, that is necessary to remediate
11 environmental harm caused by the respondent's alleged violation, or
12 that the respondent has already agreed to perform under a
13 preexisting agreement with a governmental agency.

14 (a-1) The commission may approve a supplemental
15 environmental project that is necessary to bring a respondent into
16 compliance with environmental laws or that is necessary to
17 remediate environmental harm caused by the respondent's alleged
18 violation if the respondent is a local government.

19 (a-2) The commission shall develop a policy to prevent
20 regulated entities from systematically avoiding compliance through
21 the use of supplemental environmental projects under Subsection
22 (a-1), including rules requiring an assessment of:

23 (1) the entity's financial ability to pay
24 administrative penalties;

25 (2) the ability of the entity to remediate the harm or
26 come into compliance; and

27 (3) the need for corrective action.

1 (b) In this section:

2 (1) "Local government" means a school district,
3 county, municipality, junior college district, river authority,
4 water district or other special district, or other political
5 subdivision created under the constitution or a statute of this
6 state.

7 (2) "Supplemental [~~,"supplemental~~] environmental
8 project" means a project that prevents pollution, reduces the
9 amount of pollutants reaching the environment, enhances the quality
10 of the environment, or contributes to public awareness of
11 environmental matters.

12 SECTION 4.06. Section 13.4151(a), Water Code, is amended to
13 read as follows:

14 (a) If a person, affiliated interest, or entity subject to
15 the jurisdiction of the commission violates this chapter or a rule
16 or order adopted under this chapter, the commission may assess a
17 penalty against that person, affiliated interest, or entity as
18 provided by this section. The penalty may be in an amount not less
19 than \$100 or greater than \$5,000 [~~to exceed \$500~~] a day. Each day a
20 violation continues may be considered a separate violation.

21 SECTION 4.07. Section 26.3467, Water Code, is amended by
22 adding Subsection (d) to read as follows:

23 (d) A person may not deliver any regulated substance into an
24 underground storage tank regulated under this chapter unless the
25 underground storage tank has been issued a valid, current
26 underground storage tank registration and certificate of
27 compliance under Section 26.346. The commission may impose an

1 administrative penalty against a person who violates this
2 subsection. The commission shall adopt rules as necessary to
3 enforce this subsection.

4 SECTION 4.08. Section 26.351, Water Code, is amended by
5 adding Subsections (c-1) and (c-2) to read as follows:

6 (c-1) The commission may undertake corrective action to
7 remove an underground or aboveground storage tank that:

8 (1) is not in compliance with the requirements of this
9 chapter;

10 (2) is out of service;

11 (3) presents a contamination risk; and

12 (4) is owned or operated by a person who is financially
13 unable to remediate the tank.

14 (c-2) The commission shall adopt rules to implement
15 Subsection (c-1), including rules regarding:

16 (1) the determination of the financial ability of the
17 tank owner or operator to remediate the tank; and

18 (2) the assessment of the potential risk of
19 contamination from the site.

20 SECTION 4.09. Section 26.3573(d), Water Code, is amended to
21 read as follows:

22 (d) The commission may use the money in the petroleum
23 storage tank remediation account to pay:

24 (1) necessary expenses associated with the
25 administration of the petroleum storage tank remediation account
26 and the groundwater protection cleanup program;

27 (2) expenses associated with investigation, cleanup,

1 or corrective action measures performed in response to a release or
2 threatened release from a petroleum storage tank, whether those
3 expenses are incurred by the commission or pursuant to a contract
4 between a contractor and an eligible owner or operator as
5 authorized by this subchapter;

6 (3) subject to the conditions of Subsection (f),
7 expenses associated with investigation, cleanup, or corrective
8 action measures performed in response to a release or threatened
9 release of hydraulic fluid or spent oil from hydraulic lift systems
10 or tanks located at a vehicle service and fueling facility and used
11 as part of the operations of that facility; ~~and~~

12 (4) expenses associated with assuring compliance with
13 the commission's applicable underground or aboveground storage
14 tank administrative and technical requirements, including
15 technical assistance and support, inspections, enforcement, and
16 the provision of matching funds for grants; and

17 (5) expenses associated with investigation, cleanup,
18 or corrective action measures performed under Section 26.351(c-1).

19 SECTION 4.10. Section 26.3574, Water Code, is amended by
20 amending Subsection (b) and adding Subsection (b-1) to read as
21 follows:

22 (b) A fee is imposed on the delivery of a petroleum product
23 on withdrawal from bulk of that product as provided by this
24 subsection. Each operator of a bulk facility on withdrawal from
25 bulk of a petroleum product shall collect from the person who orders
26 the withdrawal a fee in an amount determined as follows:

27 (1) not more than \$3.75 for each delivery into a cargo

1 tank having a capacity of less than 2,500 gallons [~~for the state~~
2 ~~fiscal year beginning September 1, 2007, through the state fiscal~~
3 ~~year ending August 31, 2011]~~;

4 (2) not more than \$7.50 for each delivery into a cargo
5 tank having a capacity of 2,500 gallons or more but less than 5,000
6 gallons [~~for the state fiscal year beginning September 1, 2007,~~
7 ~~through the state fiscal year ending August 31, 2011]~~;

8 (3) not more than \$11.75 for each delivery into a cargo
9 tank having a capacity of 5,000 gallons or more but less than 8,000
10 gallons [~~for the state fiscal year beginning September 1, 2007,~~
11 ~~through the state fiscal year ending August 31, 2011]~~;

12 (4) not more than \$15.00 for each delivery into a cargo
13 tank having a capacity of 8,000 gallons or more but less than 10,000
14 gallons [~~for the state fiscal year beginning September 1, 2007,~~
15 ~~through the state fiscal year ending August 31, 2011]~~; and

16 (5) not more than \$7.50 for each increment of 5,000
17 gallons or any part thereof delivered into a cargo tank having a
18 capacity of 10,000 gallons or more [~~for the state fiscal year~~
19 ~~beginning September 1, 2007, through the state fiscal year ending~~
20 ~~August 31, 2011]~~.

21 (b-1) The commission by rule shall set the amount of the fee
22 in Subsection (b) in an amount not to exceed the amount necessary to
23 cover the agency's costs of administering this subchapter, as
24 indicated by the amount appropriated by the legislature from the
25 petroleum storage tank remediation account for that purpose.

26 SECTION 4.11. (a) Not later than September 1, 2012, the
27 Texas Commission on Environmental Quality by rule shall establish

1 the method for evaluating compliance history as required by Section
2 5.753(a), Water Code, as amended by this article. Until the
3 commission adopts that method, the commission shall continue in
4 effect its current standard for evaluating compliance history.

5 (b) The changes in law made by Sections 7.052 and 13.4151,
6 Water Code, as amended by this article, apply only to a violation
7 that occurs on or after the effective date of this Act. For
8 purposes of this section, a violation occurs before the effective
9 date of this Act if any element of the violation occurs before that
10 date. A violation that occurs before the effective date of this Act
11 is covered by the law in effect on the date the violation occurred,
12 and the former law is continued in effect for that purpose.

13 (c) The change in law made by Section 26.3467(d), Water
14 Code, as added by this article, applies only to a delivery of a
15 regulated substance to a petroleum storage tank made on or after the
16 effective date of this Act.

17 ARTICLE 5. WATER RIGHTS

18 SECTION 5.01. Section 11.031, Water Code, is amended by
19 adding Subsections (d), (e), and (f) to read as follows:

20 (d) Each person who has a water right issued by the
21 commission or who impounds, diverts, or otherwise uses state water
22 shall maintain water use information on a monthly basis during the
23 months a water rights holder uses permitted water. The person shall
24 make the information available to the commission on the
25 commission's request.

26 (e) The commission may request information maintained under
27 Subsection (d) only during a drought or other emergency shortage of

1 water.

2 (f) A person submitting a report under Subsection (a) is not
3 required to include information maintained under Subsection (d).

4 SECTION 5.02. Subchapter B, Chapter 11, Water Code, is
5 amended by adding Section 11.053 to read as follows:

6 Sec. 11.053. EMERGENCY ORDER CONCERNING WATER RIGHTS. (a)
7 During a period of drought or other emergency shortage of water, the
8 executive director by order may:

9 (1) temporarily suspend the right of any person who
10 holds a water right to use the water; and

11 (2) adjust the allocation of water between water
12 rights holders.

13 (b) The executive director in ordering a suspension or an
14 allocation adjustment under this section shall ensure that an
15 action taken:

16 (1) maximizes the beneficial use of water;

17 (2) minimizes the impact on water rights holders; and

18 (3) prevents the waste of water.

19 (c) The commission shall adopt rules to implement this
20 section, including rules to determine the conditions under which
21 the executive director may take action under this section.

22 SECTION 5.03. Section 11.326, Water Code, is amended by
23 adding Subsections (g) and (h) to read as follows:

24 (g) For a water basin in which a watermaster is not
25 appointed, the executive director shall:

26 (1) evaluate the water basin at least once every five
27 years to determine whether a watermaster should be appointed; and

1 disposal facility licensing fees, to pay compact waste disposal
2 facility fees set by rule or statute, and to provide security for
3 the compact waste disposal facility as required by the commission
4 under law and commission rules; and

5 (6) provide an amount necessary to support the
6 activities of the Texas Low-Level Radioactive Waste Compact
7 Commission.

8 SECTION 6.02. Subchapter F, Chapter 401, Health and Safety
9 Code, is amended by adding Section 401.251 to read as follows:

10 Sec. 401.251. LOW-LEVEL RADIOACTIVE WASTE DISPOSAL COMPACT
11 COMMISSION ACCOUNT. (a) The low-level radioactive waste disposal
12 compact commission account is an account in the general revenue
13 fund.

14 (b) The commission shall deposit in the account the portion
15 of the fee collected under Section 401.245 that is calculated to
16 support the activities of the Texas Low-Level Radioactive Waste
17 Disposal Compact Commission as required by Section 4.04(4), Texas
18 Low-Level Radioactive Waste Disposal Compact (Section 403.006 of
19 this code).

20 (c) Money in the account may be appropriated only to support
21 the operations of the Texas Low-Level Radioactive Waste Disposal
22 Compact Commission.

23 SECTION 6.03. Sections 5.701(n) and (p), Water Code, are
24 amended to read as follows:

25 (n)(1) Each provider of potable water or sewer utility
26 service shall collect a regulatory assessment from each retail
27 customer as follows:

1 (A) A public utility as defined in Section 13.002
2 ~~[of this code]~~ shall collect from each retail customer a regulatory
3 assessment equal to one percent of the charge for retail water or
4 sewer service.

5 (B) A water supply or sewer service corporation
6 as defined in Section 13.002 ~~[of this code]~~ shall collect from each
7 retail customer a regulatory assessment equal to ~~[one-half of]~~ one
8 percent of the charge for retail water or sewer service.

9 (C) A district as defined in Section 49.001 ~~[of~~
10 ~~this code]~~ that provides potable water or sewer utility service to
11 retail customers shall collect from each retail customer a
12 regulatory assessment equal to ~~[one-half of]~~ one percent of the
13 charge for retail water or sewer service.

14 (2) The regulatory assessment may be listed on the
15 customer's bill as a separate item and shall be collected in
16 addition to other charges for utility services.

17 (3) The ~~[commission shall use the]~~ assessments
18 collected under this subsection may be appropriated only to the
19 commission or to the Public Utility Commission of Texas solely to
20 pay costs and expenses incurred by the agency ~~[commission]~~ in the
21 regulation of districts, water supply or sewer service
22 corporations, and public utilities under Chapter 13~~[, Water Code]~~.

23 (4) The commission shall annually use a portion of the
24 assessments to provide on-site technical assistance and training to
25 public utilities, water supply or sewer service corporations, and
26 districts. The commission shall contract with others to provide
27 the services.

1 (5) The commission by rule may establish due dates,
2 collection procedures, and penalties for late payment related to
3 regulatory assessments under this subsection. The executive
4 director shall collect all assessments from the utility service
5 providers.

6 (6) The commission shall assess a penalty against a
7 municipality with a population of more than 1.5 million that does
8 not provide municipal water and sewer services in an annexed area in
9 accordance with Section 43.0565, Local Government Code. A penalty
10 assessed under this paragraph shall be not more than \$1,000 for each
11 day the services are not provided after March 1, 1998, for areas
12 annexed before January 1, 1993, or not provided within 4-1/2 years
13 after the effective date of the annexation for areas annexed on or
14 after January 1, 1993. A penalty collected under this paragraph
15 shall be deposited to the credit of the water resource management
16 account to be used to provide water and sewer service to residents
17 of the city.

18 (7) The regulatory assessment does not apply to water
19 that has not been treated for the purpose of human consumption.

20 (p) Notwithstanding any other law, fees collected for
21 deposit to the water resource management account under the
22 following statutes may be appropriated and used to protect water
23 resources in this state, including assessment of water quality,
24 reasonably related to the activities of any of the persons required
25 to pay a fee under:

26 (1) Subsection (b), to the extent those fees are paid
27 by water districts, and Subsections (e), (f), and (n);

1 system of treatment devices or disposal facilities that:

2 (A) is used for the disposal of domestic sewage,
3 excluding liquid waste resulting from the processes used in
4 industrial and commercial establishments;

5 (B) is located on the site where the sewage is
6 produced; and

7 (C) produces not more than 5,000 gallons of waste
8 a day.

9 SECTION 8.03. Section 367.007, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 367.007. ADMINISTRATION. (a) ~~[The council is not an~~
12 ~~advisory body to the commission. The commission, at the direction~~
13 ~~of the council, shall implement council decisions.]~~

14 ~~[(b) The council may enter into an interagency contract with~~
15 ~~the commission to provide staff and other administrative support as~~
16 ~~required to improve the quality of wastewater treatment and reduce~~
17 ~~the cost of providing wastewater treatment to consumers.]~~

18 ~~[(c)]~~ The commission ~~[council]~~ may accept grants and
19 donations from other sources to supplement the fees collected under
20 Section 367.010. Grants and donations shall be deposited to the
21 credit of the water resource management ~~[on-site wastewater~~
22 ~~treatment research]~~ account and may be disbursed as the commission
23 ~~[council]~~ directs and in accordance with Section 367.008.

24 (b) ~~[(d)]~~ Administrative and facilities support costs are
25 payable from the water resources management ~~[on-site wastewater~~
26 ~~treatment research]~~ account.

27 ~~[(e) The council may award grants and enter into contracts~~

1 ~~in its own name and on its own behalf.]~~

2 SECTION 8.04. Section 367.008, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 367.008. AWARD OF COMPETITIVE GRANTS. (a) The
5 commission [~~council~~] shall establish procedures for awarding
6 competitive grants and disbursing grant money.

7 (b) The commission [~~council~~] may award competitive grants
8 to:

9 (1) support applied research and demonstration
10 projects by accredited colleges and universities in this state, by
11 other governmental entities, or by acceptable public or private
12 research centers regarding on-site wastewater treatment technology
13 and systems applicable to this state that are directed toward
14 improving the quality of wastewater treatment and reducing the cost
15 of providing wastewater treatment to consumers; and

16 (2) enhance technology transfer regarding on-site
17 wastewater treatment by using educational courses, seminars,
18 symposia, publications, and other forms of information
19 dissemination.

20 (c) The commission shall seek the advice of relevant experts
21 when choosing research topics, awarding grants, and holding
22 educational conferences associated with activities under this
23 chapter. [~~The council may award grants or make other expenditures~~
24 ~~authorized under this chapter only after the comptroller certifies~~
25 ~~that the on-site wastewater treatment research account contains~~
26 ~~enough money to pay for those expenditures.]~~

27 SECTION 8.05. Section 367.009, Health and Safety Code, is

1 amended to read as follows:

2 Sec. 367.009. APPROPRIATIONS. Money appropriated for the
3 purposes of this chapter shall be disbursed as the commission
4 [~~council~~] directs and in accordance with Section 367.008.

5 SECTION 8.06. Section 367.010(d), Health and Safety Code,
6 is amended to read as follows:

7 (d) The fee proceeds shall be deposited to the credit of the
8 water resources management [~~on-site wastewater treatment research~~]
9 account.

10 SECTION 8.07. Sections 367.002, 367.003, 367.004, 367.005,
11 367.006, and 367.011, Health and Safety Code, are repealed.

12 SECTION 8.08. (a) On the effective date of this Act, the
13 Texas Commission on Environmental Quality shall assume the
14 administration of all grants of the On-site Wastewater Treatment
15 Research Council in existence on that date.

16 (b) The Texas Commission on Environmental Quality shall
17 assume all contracts held by the On-site Wastewater Treatment
18 Research Council on the effective date of this Act, including all
19 rights and obligations associated with the contracts.

20 ARTICLE 9. EFFECTIVE DATE

21 SECTION 9.01. This Act takes effect September 1, 2011.